IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :
THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WP(C).No. 33146 of 2006(U)

[C.NO.133/2006 OF EAST KALLADA POLICE STATION]

PETITIONER:
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1. JOSEPH AMBROSE,
THYVILAKATH PUTHEN VEEDU,
THEKKEMURI, MUTTAM,
EAST KALLADA, KOLLAM-691 502.

2. DEVARAJAN, S/O.JOSEPH AMBROSE,
DO. DO.

BY ADV. SRI.K.SUBASH CHANDRA BOSE
SRI.V.RAJASEKHARAN PILLAI

RESPONDENTS:
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1. STATE OF KERALA,
REP. BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR GENERAL OF POLICE,
STATE OF KERALA,
THIRUVANANTHAPURAM.

3. CENTRAL BUREAU OF INVESTIGATION,
REP. BY ITS SUPERINTENDENT,
THIRUVANANTHAPURAM.

4. THE DISTRICT SUPERINTENDENT OF POLICE,
KOLLAM.

5. THE CIRCLE INSPECTOR OF POLICE,
KUNDARA, KOLLAM.

6. THE SUB INSPECTOR OF POLICE,
EAST KALLADA POLICE STATION,
KOLLAM.

ADDL. R7. D.RAJENDRAN, CIRCLE INSPECTOR OF POLICE,
SCRB, THIRUVANANTHAPURAM.
(ADDL.R7 IS IMPLEADED AS PER ORDER DATED 02/02/2007 IN I.A.NO.1651/2007]

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC NO.33146/06

PETITIONER'S EXHIBITS:

EXT.P1:- TRUE COPY OF THE PHOTOGRAPHS OF THE DEAD BODY OF ALOSCIOUS LYING IN THE DITCH.

EXT.P2:- TRUE COPY OF THE PHOTOGRAPHS OF THE DEAD BODY OF ALOSCIOUS LYING IN THE DITCH.

EXT.P3:- TRUE COPY OF THE FIR IN CRIME NO.133/2006 OF THE EAST KALLADA POLICE STATION DATED 19/7/2005.

EXT.P4:- TRUE COPY OF THE INQUEST REPORT REGISTERED IN THE CRIME NO.133/2006 OF THE EAST KALLADA POLICE STATION.

EXT.P5:- TRUE COPY OF THE POST MORTEM CERTIFICATE DATED 19/7/2006 ISSUED FROM THE MEDICAL COLLEGE HOSPITAL.

EXT.P6:- TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE 2ND RESPONDENT DATED 23/10/2006.

EXT.P7:- TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE SECOND RESPONDENT DATED 25/10/2006.

EXT.P8:- TRUE COPY OF THE PAPER REPORT APPEARED IN MALAYALA MANORAMA DAILY DATED 2/9/2006.

EXT.P9:- TRUE COPY OF THE RESOLUTION PASSED BY THE EAST KALLADA GRAMA PANCHAYAT AND A COPY OF THE LETTER REQUESTING THE CHIEF MINISTER TO ENTRUST THE MATTER TO THE CBI.

EXT.P10:- TRUE COPY OF THE PAPER REPORT IN MALAYALA MANORAMA DAILY DATED 23/10/2006.

[TRUE COPY]

R.BASANT, J

W.P(C).No.33146 of 2006

Dated this the 26th day of February, 2007

JUDGMENT

The grievance of the petitioners is that no proper investigation is being conducted into the circumstances under which the 1st petitioner's son and the 2nd petitioner's brother one Aloscius Ambrose @ Baby, aged 48 years met with his death on the night of 18.07.2006. The deceased had come home from his place of employment abroad on a short visit to see his wife who had undergone an operation. The dead body of the deceased was found in the morning of 19.07.2006 in a pit having a depth of about 25 feet. There was no symptom of the deceased falling down and it was in these circumstances that suspicions arose about the cause of death.

2. Initially it was registered as a crime under the caption “unnatural death” under Section 174 Cr.P.C. Investigation is in progress. The grievance of the petitioners is that no proper investigation is being conducted. They have a further grievance that the 7th respondent, the Circle Inspector of Police, Kundara Police Station at the relevant period had made substantial progress in the investigation. But the active efforts made by him did not succeed as he was transferred - allegedly with mala fide objectives by the powers that be in the course of investigation.

3. Respondents 1,2 and 4 to 6 have appeared through Public Prosecutor. It is submitted by the learned Public Prosecutor that the needful is being done for the proper conduct of the investigation. It is submitted that the investigators have now come to realise that it was not a case of accidental death and it is a case of homicide. Proper investigation in that direction is being conducted and it is not necessary to transfer the investigation to the Central Bureau of Investigation-the 3rd respondent, as requested by the petitioners, submits the learned Public Prosecutor.

4. The relevant materials have been considered by me. The 7th respondent was brought in the array of parties at the request of the petitioners. The 7th respondent submits that though he had not formally taken over the investigation, he had visited the spot of occurrence and had given guidance and instructions to the Sub Inspector of Police for the proper conduct of the investigation. He had also collected information from secret sources among the local people. But it is incorrect to say that he had conducted any investigation directly. During the time of his supervision/guidance of the investigation of the Sub Inspector of Police, the decision to register a grave crime had not been taken also.

5. The alleged incident had taken place as early as on 19.07.2006. The investigators have not reached any specific conclusion about the persons responsible for the homicide. Period of

about six months has already elapsed from the date of the offence. I am satisfied that there is merit in the submission of the learned counsel for the petitioners that the investigation must now be entrusted to more competent and specialised agency. Having considered all the relevant inputs, I am satisfied that there can be a direction to the Superintendent of Police, CBCID, Kollam to take over the investigation and get the same conducted under his direct supervision by an officer not below the rank of a Deputy Superintendent of Police. In as much as the petitioners submit and the 7th respondent also accepts that he had supervised the investigation and had collected information from secret sources of the local people, I am satisfied that the Investigating Officer must question and take assistance by collecting information from the 7th respondent also for the proper conduct of the investigation.

6. This Writ Petition is accordingly allowed to the extent indicated above. Necessary orders to entrust the investigation to the Superintendent of Police, Crime Branch C.I.D, Kollam shall be issued by the 2nd respondent within a period of 3 weeks under intimation to the petitioners. Compliance shall be reported to this Court also. A copy of this judgment shall be furnished to the learned Public Prosecutor forthwith for communicating the same to the 2nd respondent.

(R.BASANT, JUDGE)

rtr/-